RECORD AND BRIEFS

No. 14-6166

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID ANTHONY TAYLOR,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Supreme Court, U.S.
FILED
SEP - 4 2014
OFFICE OF THE CLERK

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court[s]:

U.S. District Court for the Western District of Virginia, Case No. 7:12-cr-00043, by order dated May 30, 2012; and

U.S. Court of Appeals for the Fourth Circuit, Case No. 13-4316, by order dated May 6, 2013.

Because appellate counsel was appointed pursuant to the Criminal Justice Act of 1984, 18 U.S.C. § 3006A, no affidavit or declaration of the petitioner is attached. *See S. Ct.* R. 39.1.

September 4, 2014

Respectfully submitted,

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ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in a federal criminal prosecution under the Hobbs Act, 18 U.S.C. §1951, the Government is relieved of proving beyond a reasonable doubt the interstate commerce element by relying exclusively on evidence that the robbery or attempted robbery of a drug dealer is an inherent economic enterprise that satisfies, as a matter of law, the interstate commerce element of the offense.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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No. _____

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DAVID ANTHONY TAYLOR,
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v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner David Anthony Taylor respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

I. OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is published and contained in Appendix A. *United States v.* Taylor 754 F.3d 217 (2014). App., *infra*, A-1.

II. JURISDICTION

The Court of Appeals entered its judgment on June 6, 2014. The jurisdiction of this Court to review this petition is conferred by 28 U.S.C. §1254(1). The petition is being filed 90 days from the date of the decision of the Court of Appeals.

III. STATUTORY PROVISION INVOLVED

18 U.S.C. § 1951 states:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section–

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

IV. STATEMENT OF THE CASE

Factual Background

On July 26, 2012 David Anthony Taylor ("Taylor") was named in a 4-count superseding indictment that charged him with two counts of robbery in violation of 18 U.S.C. §1951(a), commonly referred to as the "Hobbs Act" and two counts of using a firearm in furtherance of a crime of violence in violation of 18 U.S.C. §924(c).

The first robbery count was with respect to the alleged robbery of marijuana and drug proceeds from one William Thomas Lynch ("Lynch") on 3030 Parham Drive, Roanoke, Virginia which occurred on October 21, 2009. The second alleged robbery of marijuana and drug proceeds from one Josh Worley ("Worley") on 3343 Ridgerun, Roanoke, Virginia which occurred on August 27, 2009.

Mr. Taylor was tried by a jury in the Western District of Virginia, Roanoke Division on October 22 – 24, 2012 which resulted in a hung jury.

Mr. Taylor was again tried by jury on January 23 – 25, 2013. He was acquitted of one count of possession a firearm in furtherance of a robbery. He was convicted of two counts charging a violation of 18 U.S.C. §1951(a) and one count charging a violation of 18 U.S.C. §924(c).

Pretrial Motion

On December 12, 2012 the Government filed a Motion in Limine to preclude the introduction of evidence or argument by Mr. Taylor that marijuana dealers dealing in marijuana grown "in-state" would have no effect interstate commerce and

therefore not be a violation of the Hobbs Act. The Government relied upon *United States v. Williams,* 342 F.3d 350 (4th Cir. 2003) in support of their Motion. The District Court conducted a motion hearing on January 3, 2013 at the conclusion of which the Motion in Limine was granted, precluding the introduction of evidence or argument that "in-state" grown marijuana would have no effect on interstate commerce.

Evidence with Respect to the Robbery of Worley

The Government's case against Taylor for the robbery of Worley was comprised principally of the testimony of cooperating witnesses, George Fitzgerald ("Fitzgerald"), the organizer of the robberies and Anthony Claytor ("Claytor"), an accomplice.

According to the testimony of Fitzgerald, he, Claytor, Taylor and Dejuan Lemons ("Lemons") on the evening of August 27, 2009 travelled to 3433 Ridgerun, Roanoke, Virginia with the intent to rob Worley. Fitzgerald had been told that Worley was a marijuana dealer with access to drugs and cash. Fitzgerald had no specific knowledge that drugs would be found.

Upon arriving at the residence Taylor kicked the door open. Taylor, Lemons and Fitzgerald entered the residence and made their way to the bedroom where Worley and his liv-in girlfriend, Latasha Graham ("Graham") were found. Claytor waited outside the residence.

During the course of the robbery no marijuana, drugs or money was found by the trio. Fitzgerald testified that Taylor removed rings from the finger of Graham,

taking the rings and some money from a pocketbook on the bedroom dresser. The trio then left the Worley residence.

Worley, age 24, testified that he resided in the residence with his girlfriend, Graham, and her two children. He provided testimony that he was not a drug dealer and specifically was not selling marijuana. He testified that he had no drugs or money in the residence at the time of the robbery.

Graham, age 27, testified that on the evening of August 27, 2009 three men came into their bedroom and they were robbed. Graham had smoked marijuana from high school up to the time of the robbery, but neither she nor Worley sold marijuana or any other drugs. When the three men entered the bedroom they stated they were looking for money and weed and she advised they didn't have any. The net proceeds taken during the robbery was $40 and jewelry.

There was no testimony that either Worley, Graham or the children residing in the residence were drug dealers or that anyone possess marijuana or any other narcotics at the time of the robbery.

Evidence with Respect to the Robbery of Lynch

Fitzgerald was again called by the Government as a principal witness in the Lynch robbery. He testified that a Chris Nichols and his cousin had robbed a guy for 20 pounds of marijuana in front of the Lynch residence and that he expected to find marijuana and probably money. The Lynch robbery was carried out by himself, Lemons and Taylor. After entering the residence the trio controlled the residents and Fitzgerald questioned Lynch about the presence of weed. Lynch denied that

there was weed in the house and stated a guy named Mark had weed. After determining that there was no weed or money in the residence the trio left the residence.

During questioning by the District Court, Fitzgerald testified they were operating in the blind and didn't know if there would be marijuana and/or money present. This was described by Fitzgerald as a "hit or miss" operation.

Whitney Lynch, wife of Lynch, testified that she was in a bedroom when the trio entered and that she was questioned about money and weed repeatedly, but responded that they had no money, weed or safe. During the time the trio was in the Lynch residence the only thing that was taken was a cell phone. Following a thorough search of the residence one of the three said "everybody out of the house, let's go" and the trio then left. Mrs. Lynch testified on cross examination that neither she nor her husband dealt in drugs, including but not limited to marijuana and that she had no knowledge of a previous drug robbery at or near her home of 20 pounds of marijuana.

At all times during the trial the Government's key witness, Fitzgerald the organizer of the robberies, testified that the target of the robberies was limited to marijuana dealers. There was no testimony that marijuana traveled in interstate commerce or that sales were made to customers who traveled interstate for the purpose of making such purposes. Of equal importance there was no stipulation of fact by Taylor that marijuana traveled in interstate commerce.

Trial Court Disposition

At the conclusion of the evidence the District Court in accordance with *Williams, supra,* instructed the jury on the element of interstate commerce that the government had met its burden of proof if the jury finds and believes from the evidence beyond a reasonable doubt that Taylor reduced the movement of articles and commodities in interstate commerce, illegal drugs and drug proceeds, or attempted to do so by the robberies as charged.

Appellate Proceedings

On appeal it was urged by Taylor, that the Government must prove beyond a reasonable doubt that the marijuana and drug proceeds made the subject of the indictment traveled in or effected interstate commerce. The Fourth Circuit Court of Appeals considered this argument, but rejected it by holding that marijuana dealers fall within the classification of drug dealers whose business per se affects interstate commerce.

V. REASONS FOR GRANTING THE PETITION

This case raises an important question regarding the Government's evidentiary burdens in robbery and attempted robbery prosecutions under the Hobbs Act.

Can the Government rely exclusively on generalized evidence that robbery or attempted robbery of a drug dealer satisfies the interstate commerce jurisdictional prong of the Hobbs Act? The Fourth Circuit's holding that drug dealing is an inherently economic enterprise that affects interstate commerce and as such the

robbery of a drug dealer is the kind of act which *per se* satisfies the affecting commerce element of the Hobbs Act relieves the Government of proving the interstate commerce element of the offense. This ruling is in direct conflict with the Seventh Circuit's decision in *United States v. Peterson,* 236 F.3d 848 (7th Cir. 2001), and the Second Circuit's decision in *United States v. Needham,* 604 F.3d 673 (2nd Cir. 2010) which hold that such generalized evidence is insufficient to satisfy the jurisdictional prong of the Hobbs Act, particularly where marijuana is grown in the state where the robbery allegedly occurred. *Peterson, supra,* and *Needham, supra,* require individualized proof beyond a reasonable that the robbery charged affected interstate commerce in order to sustain a Hobbs Act conviction.

Moreover, if allowed to stand, the Fourth Circuit's decision will turn the Hobbs Act from a narrowly tailored criminal statute targeted at punishing interstate robbery to an expansive federal regime that criminalizes at the national level all robberies involving illegal drugs. Such an usurpation of the rights of the states to regulate local criminal conduct, including drug related robberies, was neither contemplated by Congress, nor is it permitted by the Constitution.

I. THE FOURTH CIRCUIT'S RULING THAT ROBBERY OF A DRUG DEALER SATISFIES THE "AFFECTING COMMERCE" ELEMENT OF THE HOBBS ACT CREATES A CIRCUIT SPLIT WITH THE SEVENTH AND SECOND CIRCUIT.

In *United States v. Lopez,* 514 U.S. 549, 115 S. Ct. 1624 (1995) and *United States v. Morrison,* 529 U.S. 598, 120 S. Ct. 1740 (200), the Court explicitly rejected the proposition that "Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce." *Morrison,*

529 U.S. at 617. Rather, "[t]he regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States." *Morrison,* 529 U.S. 618.

As the Court explained in *Morrison*, "we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, that the suppression of violent crimes and the vindication of its victims." 529 U.S. at 618. Thus, to ensure that Congress does not unconstitutionally encroach on the States' police power, in determining the constitutionality of federal criminal statutes, the Court has looked to whether the statute at issue contains a "jurisdictional element which would ensure, through case-by-case inquiry" that the alleged criminal conduct "affects interstate commerce." *Lopez,* 514 U.S. at 561; *see Morrison,* 529 U.S. at 613 (striking down the Violence Against Women Act, in part, because it "contains no jurisdictional element establishing that the federal cause of action is in pursuance of Congress' power to regulate interstate commerce.").

Unlike the federal laws struck down in *Lopez* and *Morrison,* Congress explicitly included a jurisdictional element in the Hobbs Act. *See* §1951(a) ("Whoever in any way or degree obstructs, delays or affects commerce or the movement of any article or commodity in commerce, by robbery . . . shall be fined . . . or imprisoned . . .."); *Stirone v. United States,* 361 U.S. 212, 218, 80 S. Ct. 270 (1960) ("[T]here are two essential element of a Hobbs Act crime: interference with commerce and extortion."); *see also United States v. Wilkerson,* 361 F.3d 717, 726

(2nd Cir. 2004) ("In a Hobbs Act prosecution, proof that commerce was affected is critical since the Federal Government's jurisdiction of this crime rests only on that interference." (internal quotation marks and alterations omitted)).[1]

Consequently, to obtain a Hobbs Act conviction, the Government must present sufficient evidence – and a jury must find – that the alleged robbery or attempted robbery had an effect on interstate commerce. *See, Stiorne,* 361 At 218; *Peterson,* 236 F.3d 855 (explaining that "the Hobbs Act requires individualized proof that the robbery charged affected interstate commerce"); *see* also *United States v. Gaudin,* 515 U.S. 506, 511, 115 S.Ct. 2310 (1955) ("The Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charges . . ..").

As the Seventh Circuit has held, such a showing can be made only through the submission of particularized evidence that would permit a jury to conclude on a case-specific basis, that the defendant's crime affected interstate commerce. In *United States v. Peterson, supra,* a case almost identical to this one, the Seventh Circuit clarified the Government's evidentiary burden in Hobbs Act robbery cases involving marijuana. *See Peterson,* 236 F.3d 848. Like Taylor, the defendants in

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[1] Because the Hobbs Act contains a jurisdictional element, this Court's decision in *Gonzales v. Raich,* 545 U.S. 1, 125 S. Ct. 2195 (2005) is not implicated. *See Needham,* 604 F.3d at 683-684 ("Thus, while *Raich* found that the CSA could be applied to purely intrastate cultivation and sale of marijuana, it considered only Congress's broad power to regulate drug offenses under the Commerce Clause. The Court did not purport to interpret the Hobbs Act, where Congress chose to require proof of an interstate nexus in each individual case. The difference between these two enterprises – Congress's ability to regulate a class of economic activity, versus the specific interstate effects of one transaction or offense – is obvious.")

Peterson were charged under the Hobbs Act for the robbery of a man named Estep who "sold marijuana from his . . . home" in Indiana. *Id. at* 850. At trial, the Government submitted no evidence regarding the interstate nature of Estep's drug trafficking operation. Rather, the Government relied on testimony from a DEA Special Agent who testified that "even though it was 'possible' for marijuana to be Indiana grown, it was 'highly unlikely.'" *Id. at* 855.

In vacating the robbery convictions, the Seventh Circuit rejected the Government's contention that "it need not specifically show that the drugs were grown outside Indiana." *Id.* Instead, the court held that the Government's proof "should have focused on the nature of the business robbed and how the robbery affected its operation in interstate commerce; that is to say, that Estep sold drugs from an out-of-state source and that the robbery of the money and drugs depleted the assets of his business." *Id. at* 856.

In *United States v. Needham, supra,* the Second Circuit rejected the "view that an interstate effect can be presumed wherever the object of a robbery was to obtain illegal drugs or drug proceeds. Instead, we have held that this element must be found by a jury beyond a reasonable doubt, even where the robbery targets a drug trafficking operation." *Needham* 604 F.3d at 679; *see also United States v. Parkes,* 497 F.3d 220 at 230 (2nd Cir. 2007) ("[W]e conclude that the Hobbs Act requires the jury to determine, beyond a reasonable doubt, whether the conduct affected, or would have affected, interstate commerce . . ..").

In *United States v. Needham, supra* a similar jury instruction was given as was given in Taylor's case. "Under the law, all illegal drug activity, even if it is purely local in nature, has an effect on interstate commerce. Therefore, if you find that the object of the robbery at issue was to obtain illegal drugs or money earned from the sale of illegal drugs, this element is satisfied." *Needham*, 604 F.3d at 678. "I tell you that the government has met its burden of proof if you find and believe from the evidence beyond a reasonable doubt that the defendant reduced the movement of articles and commodities in interstate commerce, in this case illegal drugs and drug proceeds, or attempted to do so by the robberies charged in Counts One and Three." *United States v. Taylor*, 754 F.3d. 217, 221 (4th Cir. 2014). As a matter of law under each instruction the robbery of a drug dealer satisfies the interstate commerce element of the Hobbs Act. The *Needham* Court citing *United States v. Parkes, supra,* reversed the conviction involving the robbery of marijuana dealers holding "Proof of drug trafficking is no longer regarded as automatically affecting interstate commerce; instead, even in drug case, the jury must find such an effect as part of its verdict." *United States v. Needham,* 604 F.3d at 678.

In *United States v. Parkes, supra,* the defendant robbed "a local, part-time marijuana dealer" named Medina. *Id. at* 231. The dealer's place of business was a "little room" that contained "one large bag containing marijuana, 58 smaller 'nickel bags,' and 44,000 in cash." *Id.* The Government submitted no additional evidence regarding "Medina's drug-dealing business; *i.e.* the origin of his marijuana, his suppliers, the route and instrumentality of delivery to Medina, his buyers or his use

of the proceeds from drug sales." *Id. at* 226 (footnote omitted). Rather, in an effort to satisfy the jurisdictional prong of the Hobbs Act, the Government relied exclusively on testimony from "an experienced narcotics investigator" that "marijuana 'is almost exclusively trucked into the United States'" and "Very little' marijuana is grown in New York." *Id. at* 23 (alteration omitted). Notwithstanding that witness' concession to the undeniable fact that "marijuana is grown within New York State," *id.* The Second Circuit concluded the evidence submitted by the Government was sufficient to meet the burden of proof requiring the government prove an effect on interstate commerce.

In sharp contrast the Fourth Circuit has held that "Drug dealing, to repeat, is an inherently economic enterprise that affects interstate commerce. For this reason, the robbery of a drug dealer has been found to be the kind of act which satisfies the "affecting commerce" element of the Hobbs Act, inasmuch as such a robbery depletes the business assets of the drug dealer." *United States v. Williams,* 342 F.3d 355. The ruling of *Williams* relieves the Government of proving the Hobbs Act element of having an effect on interstate commerce by proving the target of the robbery is a drug dealer.

The Court should grant certiorari to resolve this conflict between the Fourth, Second and Seventh Circuit and hold that the robbery of a drug dealer does not *per se* satisfy the interstate commerce jurisdiction element of the Hobbs Act. Rather – consistent with the requirements of the Hobbs Act and the Commerce Clause of the Constitution – the Government must be required to submit particularized evidence

that the alleged victim engaged in and/or effected interstate commerce as an element of the offense.

VI. CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Of the United States Court of Appeals for the Fourth Circuit
No. 13-4316, decided June 6, 2014

Appendix A

United States Court of Appeals for the Fourth Circuit
Published Opinion, No. 13-4316
United States v. David Anthony Taylor
decided June 6, 2014

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-4316

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID ANTHONY TAYLOR,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Glen E. Conrad, Chief District Judge. (7:12-cr-00043-GEC-1)

Argued: May 15, 2014 Decided: June 6, 2014

Before WILKINSON and THACKER, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by published opinion. Judge Wilkinson wrote the opinion, in which Judge Thacker and Senior Judge Hamilton joined.

ARGUED: Kari Elizabeth Jackson, Dennis Jones, DENNIS E. JONES & ASSOCIATES, Abingdon, Virginia, for Appellant. Jean Barrett Hudson, OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville, Virginia, for Appellee. **ON BRIEF**: Timothy J. Heaphy, United States Attorney, Roanoke, Virginia, Anne H. Lippitt, Third Year Law Student, OFFICE OF THE UNITED STATES ATTORNEY, Charlottesville, Virginia, for Appellee.

WILKINSON, Circuit Judge:

David Anthony Taylor appeals his convictions for two counts of Hobbs Act robbery in violation of 18 U.S.C. § 1951(a) and one count of using a firearm in furtherance of a crime of violence in violation of 18 U.S.C. § 924(c). Taylor contends both that the government failed to introduce sufficient evidence to establish that his robberies affected interstate commerce and that the district court erred in prohibiting him from showing that the particular drugs he was seeking to steal did not affect interstate commerce. Pursuant to Supreme Court precedent supporting the broad ability of Congress to punish the disruption of interstate commerce and our own conforming decisions in United States v. Tillery, 702 F.3d 170 (4th Cir. 2012), and United States v. Williams, 342 F.3d 350 (4th Cir. 2003), we affirm his convictions.

I.

A.

Taylor was a member of the "Southwest Goonz," a group of robbers led by George Fitzgerald and based in Roanoke, Virginia. The Goonz focused on robbing drug dealers because they typically have drug proceeds in their homes and, because of the illegal nature of their activities, they are reluctant to report crime to the authorities. Taylor persuaded Fitzgerald to take him on

several planned home invasions in order to steal drugs and drug proceeds, such as money and jewelry.

One of these break-ins was planned for the residence of Josh Whorley, where his girlfriend Latasha Graham and her two children also lived. Fitzgerald chose Whorley's home because he had learned that Whorley sold an exotic and high grade of marijuana, a belief that he communicated to Taylor and two other group members. The robbers expected to find both drugs and money there.

Their expectations were not unreasonable, because Whorley had both used and sold drugs in the past. Graham herself was a regular marijuana user. Additionally, Whorley's house had been broken into twice prior to the August 27, 2009 robbery, and a housemate had been held at gunpoint in the driveway.

Taylor and his associates robbed Whorley's house on the night of August 27. The four robbers kicked in the front door and held guns to Whorley and Graham while searching the house. During the robbery, Taylor hit Graham in the head with his pistol, groped her, and clawed the rings off her fingers. Whorley was also repeatedly struck by one of the robbers. The robbers demanded that Graham tell them where the money and marijuana were located. All in all, the robbers made off with Graham's jewelry, $40 from her purse, two cell phones, and a marijuana cigarette.

Another break-in was planned for the home of William Lynch, who lived together with his wife, Whitney Lynch, and their three children. Fitzgerald chose Lynch's home because he had been told by a previously reliable source that Lynch sold marijuana. The source further informed Fitzgerald that on a prior occasion he had personally robbed Lynch, also known as "W.T.," of twenty pounds of marijuana. Lynch surrounded himself with people who used and possessed drugs. Taylor and Fitzgerald both expected to recover marijuana and drug proceeds during the home invasion.

The Goonz robbed Lynch's residence on October 21, 2009. Taylor initiated the robbery by knocking on the front door. After he entered the home, Fitzgerald and another group member followed. Once inside, Taylor held Lynch and his six-year old son at gunpoint in the living room, while another robber forced Lynch's nine-year old daughter from her bedroom into the living room. Fitzgerald asked Lynch to tell him where the marijuana was located. Lynch insisted that he did not have it and claimed that it was in another man's possession. Whitney Lynch emerged from her bedroom at the sound of the commotion and was assaulted by a robber, who attempted to remove her pants. She struggled with him while he demanded that she show him where the money and drugs were located. She was then dragged into the living room by her hair. The three robbers eventually took Lynch's cell phone and departed.

B.

On July 26, 2012, Taylor was indicted by a grand jury in the Western District of Virginia on two counts of Hobbs Act robbery under 18 U.S.C. § 1951(a) and two counts of using a firearm in furtherance of a crime of violence under 18 U.S.C. § 924(c). Taylor's first trial resulted in a hung jury.

A second trial was conducted from January 23 to 25, 2013. Before the second trial commenced, the government moved to preclude Taylor from offering evidence that robbing a drug dealer who sells marijuana grown within the borders of Virginia does not affect interstate commerce and thus does not violate the Hobbs Act. Taylor filed a Motion to Dismiss, contending that such a ruling would violate his constitutional right to present a complete defense. The district court held a hearing after which it granted the government's motion on the grounds that the enterprise of drug dealing affects interstate commerce as a matter of law under United States v. Williams, 342 F.3d 350 (4th Cir. 2003). See also United States v. Tillery, 702 F.3d 170, 175 (4th Cir. 2012) (upholding conviction for Hobbs Act robbery of a business because it impacted interstate commerce "in the aggregate").

On January 25, the jury convicted Taylor on three of the four counts in the indictment, including both of the Hobbs Act offenses. With regard to the Hobbs Act crimes, the jury found

Taylor guilty of "knowingly and unlawfully taking and obtaining, or attempting to take or obtain, by robbery, items having an effect on interstate commerce by means of actual and threatened force, violence, and fear of injury." J.A. 702. Taylor moved to set aside the verdict on the basis that the government had not offered evidence that Taylor's actions had affected interstate commerce. The district court denied Taylor's motion. The court then sentenced Taylor to 336 months in prison followed by supervised release for three years. Taylor now appeals.

II.

Taylor argues that the government failed to present sufficient evidence that his robberies affected interstate commerce under the Hobbs Act. He also contends that the district court erred in prohibiting him from showing that his robberies of dealers of Virginia-grown marijuana likely did not impact interstate commerce.

A.

We note at the outset the extraordinary breadth and reach of the Hobbs Act. That law reads, in pertinent part:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be [punished].

18 U.S.C. § 1951(a). A Hobbs Act crime, then, has two elements: "(1) robbery or extortion, and (2) interference with commerce." Tillery, 702 at 174. With regard to the second element, it is impossible to ignore Congress' repeated use of the word "any." Indeed, the Supreme Court has recognized that the Hobbs Act "speaks in broad language, manifesting a purpose to use all the constitutional power Congress has to punish interference with interstate commerce . . . ." Stirone v. United States, 361 U.S. 212, 215 (1960). Thus, the jurisdictional predicate of the Hobbs Act requires only that the government prove a "minimal" effect on interstate commerce. United States v. Spagnolo, 546 F.2d 1117, 1119 (4th Cir. 1976).

Such an impact is not difficult to show. The effect may be so minor as to be de minimis, United States v. Buffey, 899 F.2d 1402, 1404 (4th Cir. 1990), and may be demonstrated by "proof of probabilities," United States v. Brantley, 777 F.2d 159, 162 (4th Cir. 1985). Moreover, the government is not required to prove that the "defendant intended to affect commerce or that the effect on commerce was certain; it is enough that such an effect was the natural, probable consequence of the defendant's actions." Williams, 342 F.3d at 354.

To determine whether a robbery affects commerce, we do not simply examine the effect of the individual action in question;

it is sufficient that the "relevant class of acts" has a measureable impact on interstate commerce. Tillery, 702 F.3d at 174 (internal quotation marks omitted). Considering the class of activities in the aggregate in order to determine whether they impact interstate commerce is nothing new. The Supreme Court has repeatedly found that Congress may regulate conduct under the Commerce Clause that, in the aggregate, impacts interstate commerce. See, e.g., Gonzales v. Raich, 545 U.S. 1, 18-19, 22 (2005) (holding that Congress may regulate intrastate marijuana market because of its aggregate impact on interstate commerce); Wickard v. Filburn, 317 U.S. 111, 128-29 (1942) (finding that Congress is permitted to regulate activities that, when "taken together with th[ose] of many others similarly situated," have an effect on interstate commerce).

We have likewise recognized that, because the Hobbs Act reflects the full breadth of Congress' commerce power, the aggregation principle applies in the Hobbs Act context. See Tillery, 702 F.3d at 174-75; Williams, 342 F.3d at 355. Indeed, to focus exclusively on an individual act would wholly undermine Congress' purpose in adopting the Hobbs Act: to protect commercial, interstate activity from criminal disruption. See United States v. Culbert, 435 U.S. 371, 373 (1978) (finding that the words of the Hobbs Act "do not lend themselves to restrictive interpretation").

In so ruling, we note the large number of circuits that agree that the aggregation principle applies in the context of a Hobbs Act violation. See United States v. Powell, 693 F.3d 398, 402 (3d Cir. 2012) ("[B]ecause the Hobbs Act contains a jurisdictional element and criminalizes the 'fundamentally economic' crimes of robbery and extortion, violations of the Act have a substantial effect on interstate commerce in the aggregate, and the government need not prove a substantial effect in each individual case.") (citations omitted); United States v. Robinson, 119 F.3d 1205, 1214 (5th Cir. 1997) (same); United States v. Davis, 473 F.3d 680, 683 (6th Cir. 2007) (same); United States v. Marrero, 299 F.3d 653, 655 (7th Cir. 2002) (same); United States v. Bolton, 68 F.3d 396, 399 (10th Cir. 1995) (same); United States v. Guerra, 164 F.3d 1358, 1361 (11th Cir. 1999) (same). "Any other rule would leave the federal government helpless to deal with criminal acts that have an individually trivial but cumulatively significant effect on the movement of goods and services across state and international boundaries." United States v. Thomas, 159 F.3d 296, 298 (7th Cir. 1998).

The requirement that the precise effect on commerce be traced in each and every case would not only damage the aggregation principle and the class of acts principle that underlies it; it would also raise concerns of practicality which

militate against a requirement of showing every charged crime's precise commercial effect. See Marrero, 299 F.3d at 655 ("Nor is it necessary that the individual criminal act . . . be shown to have a measurable impact on commerce, which would usually be impossible to show. It is enough if the class of acts has such an impact."). To the extent that United States v. Needham, 604 F.3d 673 (2d Cir. 2010), is in tension with our holding, we note simply the observation of Judge Cabranes that "'commerce' for purposes of the Hobbs Act -- that is, 'commerce over which the United States has jurisdiction,' 18 U.S.C. § 1951(b) -- encompasses marijuana that is grown, processed, and sold entirely within a single state." Id. at 688 (Cabranes, J., dissenting in part and concurring in part). If there is to be a "marijuana exception" to traditional Hobbs Act principles, that is a policy choice for the Congress to make. Until it does, we shall follow the plain lessons of Supreme Court cases and our own precedent, which must of necessity govern our disposition of this case.

It is of no relevance that the market for a certain commodity may be illegal. The jurisdictional predicate in the Hobbs Act speaks of "commerce," not just "legal" or "legitimate" commerce, and commerce is well understood to encompass unlawful transactions. See Raich, 545 U.S. at 18-19 (holding that the Commerce Clause empowers Congress to regulate and criminalize

the national market for marijuana). Drug dealing is a commercial enterprise and robberies of drug dealers threaten that enterprise; that is enough for a federal court to exercise jurisdiction under the Hobbs Act. See Williams, 342 F.3d at 354 (finding that "robberies of drug dealers . . . impact[] a trade that plainly is both economic and interstate in character").

Finally, it is not dispositive that the robberies involved the invasion of the victims' homes. Many businesses, including illegal drug enterprises, operate out of homes. As the Supreme Court has emphasized, commercial activities in or near the home may have a significant cumulative effect upon interstate commerce. See Raich, 545 U.S. at 19 (holding that, "when viewed in the aggregate, . . . Congress had a rational basis for concluding that leaving home-consumed marijuana outside federal control would . . . affect price and market conditions"); Wickard, 317 U.S. at 128 ("It can hardly be denied that a factor of such volume and variability as ho[illegible]consumed wheat would have a substantial influence on price and market conditions."). Thus, the locus of the commercial activity is not the litmus test of a Hobbs Act violation.

B.

We now turn to the merits of Taylor's claims. He first contends that the government was required to offer particularized evidence that his personal robberies affected

interstate commerce and that, because the government offered no such evidence, the district court lacked jurisdiction over his prosecution under the Hobbs Act. In an appeal contesting the sufficiency of the evidence, we view "the evidence and the reasonable inferences to be drawn therefrom in the light most favorable to the Government" and uphold the verdict if it is supported by substantial evidence. Williams, 342 F.3d at 355 (internal quotation marks omitted).

At the conclusion of trial, the district court instructed the jury on the jurisdictional element as follows:

> In considering . . . whether there has been an obstruction, delay, or effect on interstate commerce, I tell you that the government has met its burden of proof if you find and believe from the evidence beyond a reasonable doubt that the defendant reduced the movement of articles and commodities in interstate commerce, in this case illegal drugs and drug proceeds, or attempted to do so by the robberies charged in Counts One and Three.
>
> It is not necessary for the government to prove that the defendant intended to affect interstate commerce; rather, this element may be proven by evidence that a defendant's actions were likely to affect interstate commerce, even though the actual impact on commerce is small.

J.A. 673-74. These instructions were in accord with the law as described above and Taylor's argument thus rests solely on the sufficiency of the evidence with regard to the jurisdictional predicate. But while Taylor contends that the government failed

to prove the jurisdictional element, we find that the jury could rationally have found that the government met its burden.

First, it was entirely reasonable for the jury to conclude that the robberies "would have the effect of depleting the assets of an entity engaged in interstate commerce." Buffey, 899 F.2d at 1404. In Williams, we found that drug dealing was "an inherently economic enterprise that affects interstate commerce." 342 F.3d at 355. Although Williams involved cocaine and Taylor's robberies involved marijuana, the principle of aggregation does not apply differently for different drugs. See Raich, 545 U.S. at 18-19 (applying the aggregation principle to the market for marijuana). Because drug dealing in the aggregate necessarily affects interstate commerce, the government was simply required to prove that Taylor depleted or attempted to deplete the assets of such an operation.

Sufficient evidence was adduced at trial for a rational jury to find that Whorley was a drug dealer and that Taylor depleted or attempted to deplete his assets during the August 27 robbery. The record shows that the Goonz were in the business of robbing drug dealers, Fitzgerald testified that he selected Whorley's house to rob because he was informed that a drug dealer lived there, and testimony further revealed that Taylor took part in the robbery because he expected to find drugs and drug proceeds in the home. Furthermore, Whorley admitted to

having sold drugs in the past and Graham did in fact possess marijuana at the time of the robbery. A Roanoke City detective testified that drug dealers are commonly victims of repeated home invasions and that he suspected Whorley of being a drug dealer because Whorley's house had been broken into at least twice prior to the August 27 robbery.

Additionally, the money, jewelry, cell phones, and marijuana cigarette that Taylor stole are sufficient to meet the de minimis standard under the depletion-of-assets theory. "We have never held . . . that the depletion of assets theory has a dollar-amount minimum." Tillery, 702 F.3d at 175. But even if these items together do not meet that low threshold, the jury could rationally have concluded that Taylor attempted to steal drugs and drug proceeds, and therefore satisfied the Hobbs Act jurisdictional element. See Brantley, 777 F.2d at 163-64 (holding that Hobbs Act jurisdictional element may be satisfied by inchoate crimes).

Likewise, the government proffered sufficient evidence for a rational jury to conclude that Lynch was a drug dealer and that Taylor depleted or attempted to deplete his assets in the October 21 robbery. As with the robbery of Whorley, the Goonz was a group dedicated to robbing drug dealers. Fitzgerald testified that he had received intelligence from a reliable informant that Lynch was a drug dealer and had previously been

robbed of twenty pounds of marijuana. Additional testimony revealed that Taylor thought there would be drugs and drug proceeds in the house. Fitzgerald called Lynch by his nickname, "W.T.," and, when he demanded that Lynch hand over the drugs, Lynch told him that the marijuana was with another person. Moreover, a federal officer testified that Lynch admitted that he had sold drugs before the robbery without his wife's knowledge and Lynch's wife testified that he associated with suspicious characters who used and possessed illegal drugs. As with Whorley, the jury could rationally have found that Taylor attempted to deprive Lynch's operation of both drugs and drug proceeds and found jurisdiction accordingly. There was thus sufficient evidence at trial for the jury to have determined that the jurisdictional element was satisfied under a depletion-of-assets theory for both the Whorley and Lynch robberies.

Apart from the effect on the assets of an operation whose character involves interstate commerce, there was evidence that the defendant intentionally targeted a business engaged in interstate commerce. See Powell, 693 F.3d at 405. While evidence of the defendant's intent is not required to prove that his robberies had an impact on interstate commerce, that intent is still probative on the question of whether his actions would have had the "natural consequence[]" of affecting such commerce. See id. (finding jurisdictional element met because defendant

"deliberately sought to rob business owners to obtain proceeds of businesses engaged in interstate commerce").

Under the targeting theory, a defendant who robs a victim in the belief that he will recover the proceeds of an enterprise engaged in interstate commerce will not fortuitously escape prosecution under the Hobbs Act because his target did not possess those proceeds at the precise time of the robbery. See Brantley, 777 F.2d at 162 ("It may be enough [to prove the jurisdictional predicate] that the parties intended to complete a transaction which would have affected commerce, though their intention was frustrated."). The amount of cash on hand in a drug dealing enterprise fluctuates dramatically; the victims were doubtless targeted by Taylor and the other Goonz in the hope they would be found at a flush moment. That they were not does nothing to vitiate Taylor's intent to target an enterprise which by its nature engages in interstate commercial activity.

The evidence here was thus sufficient for two independent reasons. Whether viewed through the lens of the effect of the defendant's crimes (depletion of assets) or his intent (targeting), the government adduced sufficient evidence in this case to meet the jurisdictional element of the Hobbs Act. We

therefore sustain Taylor's Hobbs Act convictions.* As Taylor challenged his conviction for using or carrying a firearm in furtherance of a crime of violence under 18 U.S.C. § 924(c) solely on the ground that the Hobbs Act predicate was infirm, that conviction too must be upheld.

This is not to imply that the reach of the Hobbs Act is without limits. All robberies are disruptive, but not every disruption is an obstruction of commerce. The Sixth Circuit, for example, held that the jurisdictional element of the Hobbs Act was not satisfied when the defendant stood convicted of robbing "private citizens in a private residence" of money, some of which just happened to "belong[] to a restaurant doing business in interstate commerce." United States v. Wang, 222 F.3d 234, 240 (6th Cir. 2000). Whatever connection between the robbery and the business was absent in Wang is plainly present in the case at bar.

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* Taylor's second argument is that the district court erred in granting the government's pretrial motion in limine precluding him from presenting evidence that the marijuana at issue was grown in Virginia and thus was not connected to interstate commerce. We review the district court's evidentiary rulings for abuse of discretion. United States v. Moore, 27 F.3d 969, 974 (4th Cir. 1994).

The district court found that, because drug dealing enterprises inherently affect interstate commerce, any argument or evidence tending to show that the drugs in the particular case had not moved across state lines was not relevant. For the reasons expressed in Part II.A, supra, that ruling was correct, and the trial court necessarily did not abuse its discretion in granting the government's motion.

For the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED